Before the Federal Communications Commission

Washington, D.C.

IN THE MATTER OF:	)	FCC File No.: 04-162
	)	In
PAY-PER-CALL RULE REVIEW	)	CG Docket No.: 04-244
	)	CG Docket No.: 98-170
	)	REPLY COMMENTS OF HFT

I

THE SCOPE OF THE PROBLEM

Not enough has been said regarding the alleged scope of the problem that the Commission seeks to resolve, especially given some of the drastic, almost draconian measures that are being suggested. Much has been made of the "modem highjacking" as described in briefs filed by Verizon and NASUCA.[1] Few would argue that such schemes should go unpunished. But such conduct no more justifies the elimination of legitimate non-900 options to audiotext calls as the robbery of an ATM user would justify eliminating ATM machines as an option to withdrawing money from a bank! While

[1] HFT supports all enforcement efforts to eliminate this patently illegal conduct.

outlawing ATM machines would certainly eliminate all instances of such robberies of convenience that ATM's make possible, it hardly justifies the ends achieved. So it is with so many of the proposed rule changes, especially those which involve the re-definition of statutory language developed and passed by the legislature, with all of the protections and safeguards that exist in the law making process, and which are conspicuously lacking here.

The Commission must courageously examine, and ask itself why, among the thousands of local and long distance carriers operating in this country, AT&T is the ***only*** carrier still complaining about the issue of commissions to information providers. Even Verizon's briefs were focused on the issue of modem highjacking and omitted any discussion on this topic. Why were there no other carriers which took the time and effort to comment on this "problem"? Why, when it is the carrier which is the first in line to receive a billing complaint, was there not a greater outpouring of concern from the entities with the strongest interest to speak up? The answer is obvious. The problem is not with the payment of commissions, but with the unscrupulous few which are determined to game and cheat the system at the expense and detriment of the vast majority of providers who are playing by the rules and who are providing a service the consumers want.

Additional evidence that the commissions issue is not the problem AT&T would have the FCC believe it is, may be found in the dearth of calls to the FCC on this particular topic. With millions of calls generating tens of millions of minutes a month on non-900 audiotext platforms, why is the FCC non inundated with complaints about information providers who are getting commissions from carriers based on the traffic their businesses generate? Because nobody in the private business sector, with even a rudimentary understanding of marketing, would take issue with a commission serving as the basis of a compensation agreement between a carrier and a provider of information services. There is no doubt that every major carrier employs some system of incentive-based compensation for its sales force to encourage new customers, more calls, and more time on the telephone. That is, by the way, precisely how phone companies make their money and increase their revenues.

II

THE CONSUMERS WANT THESE SERVICES

Nobody knows better than the FCC the public demand for the services which are the subject of this NPRM. History has proven that this is not a demand that was just a passing fancy. The consumers want access to the services in question, and have been expressing this want for over a decade with an ever increasing appetite for an ever increasing scope of services. This fact seems to have been lost among the many commenters who purport to speak "for the people". Consumers are expressing their desire for these services in the strongest possible way, with their wallets, generating a demand that legitimate providers have successfully met with a plethora of innovative and unique offerings. This is called "capitalism", and it is ***not*** a bad word. Any unreasonable attempt to quell the motivation of those legitimate and innovative providers in the name of "protecting the public from themselves" will ultimately deny the public that which it has clearly demanded. The public has demanded choice, variety and simple access at a fair price. Take away the providers' incentive to provide the public with what it wants, and you risk denying the people exactly what they have requested.

Look long and hard at who is complaining the loudest; AT&T and Verizon. Why? Because they are the ones with the most to loose. They control access to the market and they do not wish to loose that control. Give them what they want, control over the method by which a provider must be compensated, and you grant them unfettered control of a market that by all rights belongs to competition, not to the giants.

III

THE COMMISSION SHOULD NOT ALLOW A BACK-DOOR REGULATION ON CONTENT

Since the Sable[2] decision and reasoning thereunder was denounced as unconstitutional, certain market segments, industry players and regulators have been looking for a method to control the content of what may be exchanged in terms of ideas and messages through the platforms provided by information providers. Of course, since content-based restrictions do not pass constitutional muster, the search has been for a non-content based restriction that will have the same result. Cleverly, their search has led them to look at the billing end of the formula. Now, the line is, in effect, "We don't care what is being said, we are just going to make it so difficult for you to bill for it that it simply will not be worth your while to provide the service." What would be considered "suspect" through explicit restrictions on content should not be considered any less suspect, simply because someone has found a more clever way to effect the

[2] *Sable Communications of California, Inc. V. FCC*, 492 U.S. 115 (1999).

identical restriction on content.

IV

900 IS NOT A VIABLE OPTION

HFT addressed in its opening comments a number of reasons why the 900 dialing pattern is not a viable option for all audiotext traffic. Driving this point home, however, was Verizon's reply, at pages 6-7, where it admitted that it routinely refuses to bill for 900 traffic that it deems, on its own subjective standard, "objectionable". Couple this with the fact that the Commission has long refused to require carriers to bill for 900 service[3], and you have an industry which is entirely content controlled by an organization that is convinced it has the moral mandate and authority to set community standards, nationwide, for the provision of audiotext services.

There can be no better testimonial against forcing all audiotext traffic to the 900 platform. It allows Verizon to dictate the content of all 900 based communications; those it agrees to bill for (because you must meet its subjective "objectionable" standards), as well as those it refuses to bill for, because the provider cannot charge for the call.

Dated: November 29, 2004

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[3]In fact, wireless and CLEC carriers are not even required to ***transport*** 900 traffic!